

Office of the Governor
State of Louisiana

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GOVERNOR



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January 22, 2021

Kathleen Allen
Ethics Administrator
Louisiana Ethics Administration Program
Post Office Box 4368
Baton Rouge, Louisiana 70821

RE: Advisory Opinion

Dear Ms. Allen:

The Office of the Governor has identified Stanley M. Dameron as a candidate for appointment to the position of Commissioner of the Office of Financial Institutions ("OFI"). Due to the nature and scope of OFI's regulatory authority, I request an Advisory Opinion from the Board of Ethics to ensure that Mr. Dameron's appointment as Commissioner will not in any way violate the Code of Governmental Ethics. For your consideration, I have also attached a copy of OFI's internal Ethics Policy.

Office of Financial Institutions

La. R.S. 6:101 et seq. establishes OFI as a state agency within the Office of the Governor. The chief officer of OFI is the Commissioner of Financial Institutions who also serves as Commissioner of Securities. The Commissioner has exclusive supervisory and regulatory jurisdiction and authority over Louisiana state-chartered financial institutions and other financial entities regulated by OFI. The following entities are subject to OFI's jurisdiction:

- Banks
- Thrifts
- Holding companies of banks and thrifts
- Credit Unions
- Trust Companies
- Business and Industrial Development Companies (BIDCOs)
- Certified Louisiana Capital Companies (CAPCOs)
- LA Community Development financial institutions
- Securities broker-dealers

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HAND DELIVERED

- Securities investment advisors
- Sale of checks/money transmitters
- Licensed lenders, including payday lenders
- Loan Brokers
- Residential mortgage lenders, brokers, and originators
- Notification filers
- Pawnbrokers
- Check cashers
- Bond for Deed escrow agents
- Repossession agencies, agents and apprentices

OFI is responsible for the chartering/licensing, examination, and investigation of complaints and other matters related to regulated entities. Examples of transactions which the above entities engage include, but are not limited to loans, credit cards, deposits, securities, fiduciary, money transmission, check cashing, pawn, repossession, and bonds for deed. Lending is a primary focus of OFI's examination and regulation of banks and other financial institutions and can result in a management criticism.

Factual Background

Mr. Dameron, now retired, has provided our office the following information. He worked in the banking industry for 48 years.¹ He was employed by First Guaranty Bank for 9 years, last serving in the capacity of President/CEO. At the time of separation, he owned 2,916 shares of stock in First Guaranty Bank which represented an ownership interest in this institution of well under 1%.

Mr. Dameron was employed by American Bank & Trust for 15 years, last serving in the capacity of Chief Executive Officer. Upon his retirement in February 2020, he owned 14,975 shares of stock in American Bank & Trust which represented an ownership interest in this institution of well under 2%.

In response to being considered for appointment as Commissioner of Financial Institutions, to avoid a conflict of interest or violation of the Code of Governmental Ethics, Mr. Dameron divested himself of ownership of all stock in these institutions. His shares were sold via arms-length transactions for market value with no premium. These sales were not to an immediate family member as defined by the Code, nor to any entity to which he or his immediate family has an ownership interest. Mr. Dameron advises that he and his immediate family members (nor any entity which he or his immediate family members has an ownership interest) do not have any continuing transactions/dealings nor ownership interests in these banks.

¹ Throughout his life, Mr. Dameron worked for four banks, two of which no longer exist.

During his employment with American Bank & Trust, the bank purchased a Bank-Owned Life Insurance policy for Mr. Dameron as part of his compensation package. This transaction occurred approximately two and one-half year ago, with the premium for this policy paid in full by American Bank & Trust at the time of purchase. American Bank & Trust no longer pays premiums on this policy and, by its terms, will not pay any additional premiums.

Under the terms of this policy, which I understand to not be uncommon in the banking industry, upon his death, American Bank & Trust would have received a portion of the proceeds of the death benefit, with Mr. Dameron's designated beneficiary receiving the remainder. Since he is not deceased, by virtue of the terms of this policy, Mr. Dameron, commencing later this year, will receive an annual annuity from this policy for the next ten years. The existence of this Bank-Owned Life Insurance policy is mentioned herein despite the likely applicability of La. R.S. 42:1122 which authorizes a public servant to continue to participate in a bona fide pension, insurance or other benefit plan maintained by a former employer, provided that such former employer provides no contributions on the public servant's behalf during the period of public service.

Other than as above stated, Mr. Dameron does not currently work for nor provide services of any nature to any state-chartered or licensed financial institution. Also, he does not currently have an ownership interest in any state-chartered or licensed financial institution.

In addition to the above, Mr. Dameron informed our office that his son has been employed for four years by Gulf Coast Bank & Trust, a state-chartered bank subject to OFI's regulatory authority. His son serves as Assistant Vice-President/Commercial Lender and reports to the bank's Senior Lender. He solicits loan customers and prepares documentation for submission to the bank's loan underwriting department. He has no authority to approve loans. His son does not sit on the bank's Board of Directors nor any other executive committee, and does not make policy decisions for the bank. He has no ownership interest in the bank. He has no record ownership of bank stock other than via participation, like other bank employees, in the bank's Employee Stock Ownership Plan.

Advisory Opinion Request

Considering the information provided, I ask that the Board of Ethics address the following issues:

- 1) Would Mr. Dameron's prior employment with First Guaranty Bank and American Bank & Trust, and/or his prior ownership of stock in these financial institutions cause there to be a violation of the Code of Governmental Ethics in the event of his appointment to the position of Commissioner of Financial Institutions?

- 2) Would Mr. Dameron's entitlement to compensation from the Bank-Owned Life Insurance policy previously paid for by American Bank & Trust cause there to be a violation of the Code of Governmental Ethics in the event of his appointment to the position of Commissioner of Financial Institutions?
- 3) Would a violation of the Code of Governmental Ethics occur if Mr. Dameron is appointed to the position of Commissioner of Financial Institutions in view of OFI's required normal course of regulation of Gulf Coast Bank & Trust in view of the bank's employment of his son?
- 4) If Mr. Dameron's son's employment by Gulf Coast Bank & Trust would cause a violation of the Code of Governmental Ethics in the event of his appointment to the position of Commissioner of Financial Institutions:
 - a) Could Mr. Dameron avoid or cure any such violation of the Code of Governmental Ethics by disqualifying himself (La. R.S. 42:1112.C) from participating in OFI's regulatory activities of Gulf Coast Bank & Trust?
 - b) Could Mr. Dameron avoid or cure any such violation of the Code of Governmental Ethics by utilizing the provisions of La. R.S. 6:102.C which authorize him to delegate to any officer or employee of OFI such powers as he deems appropriate or by designating any officer or employee of OFI to perform any of his duties?
 - c) Could the financial disclosure provisions of La. R.S. 42:1114 be utilized to permit Mr. Dameron or his son to avoid any such violation of the Code of Governmental Ethics?

Please know that I appreciate any assistance you may provide in facilitating a response to this request. If information is required, please do not hesitate to contact me.

Sincerely,



Matthew F. Block
Executive Counsel

enclosure

Office of Financial Institutions
ETHICS

I. PURPOSE

To establish guidelines for all Office of Financial Institutions (OFI) employees in relation to the soliciting of employment, transacting business, family members working within the same agency, and other activity that might create a conflict of interest or a violation of the Code of Ethics. All OFI employees are responsible for conducting all of his or her affairs in a manner in which no legitimate criticism shall be made.

II. SOLICITATION OF EMPLOYMENT

A. Purpose

An employee of OFI shall not solicit job offers while conducting an examination, participating in an examination, or considering proposals submitted by state-chartered financial institutions or other entities regulated by OFI or while actively participating in the agency's mission of regulating financial entities.

B. Applicability

This section applies to all OFI employees.

C. R.S. 42:1116 states, in pertinent part, that:

"No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with any thing of economic value."

D. Employment Inquiry

1. The Code of Ethics does not prohibit an inquiry about employment with an entity regulated by OFI, if the inquiring employee is not conducting or participating in an examination or considering a proposal submitted by an OFI regulated entity. In essence, the prohibition is transactional or situational oriented. For example, an examiner is reviewing loans in Local State Bank, Anytown, and notes that the bank could use a loan reviewer or compliance auditor. The examiner cannot submit a resume' or other request for employment to the bank, until such time as the report of examination has been received by the bank. Once the report of examination is received by the bank, the examiner is free to negotiate with the bank for employment.

2. If the financial institution employs the examiner, he or she can address any problem identified in the report of examination, but cannot represent the bank at any hearings or proceedings at the Office of Financial Institutions as a result of any examination in which he or she may or may not have participated in.
3. Further, if an examiner has made an inquiry about employment with an institution regulated by this agency and is requested to answer a question or to become involved in an examination, he or she must cease further contact with the institution or make a written declaration to the OFI recusing himself/herself from any involvement with the institution because of prospective employment.
4. The mere fact that one is employed by OFI does not preclude an employment inquiry to or by an OFI regulated entity. Any person actively engaged in an examination or the consideration of a proposal submitted by an OFI regulated entity completes the transaction that places the employee in violation of the applicable ethics laws by inquiring about employment with an institution.

E. Section 1112(B)(4) provides, in pertinent part, that:

(B) No public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest: (4) **“Any person with whom he is negotiating or has an arrangement concerning prospective employment.”**

F. R.S. 42:1102(23) defines “transaction involving the governmental entity” as meaning, in part:

“Any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other particular matter which the public servant or former public servant of the governmental entity in question knows or should know: is or will be, the subject of action by the governmental entity.”

G. Section 1102(21) defines “substantial economic interest” as meaning:

1. “An economic interest which is of greater benefit to the public servant or other person, than to a general class or group of persons, except:

- a. The interest that the public servant has in his position, office, rank, salary, per diem, or other matter arising solely from his public employment or office or
 - b. The interest that a person has as a member of the general public.”
2. Further, no former public employee shall, for a period of two years following termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which the individual was formerly employed, or for a period of two years following termination of his public employment, render, on a contractual basis to or for the agency with which he was formerly employed, any service which such former public employee had rendered to the agency during the term of his public employment. R. S. 42:1121(B).
3. The agency is not attempting to limit an individual's right to seek employment, but rather to remind all employees of their responsibility to recuse themselves in writing to this office if possible conflicts may exist or cease employment inquiries or negotiations, as applicable.

III. NEPOTISM

A. Policy

It is the policy of OFI to recruit and employ the best qualified individuals solely on the basis of merit. In accordance with this policy, persons related to OFI employees by blood or marriage will not be excluded from employment by OFI. OFI will enforce nepotism provisions of the Code of Ethics which require that no member of the immediate family of a governing authority or the chief executive of a governmental entity shall be employed by the governmental entity.

B. Applicability

This section applies to all OFI employees

C. Definitions

1. Immediate family is defined as children, brothers, sisters, parents, spouse, and the parents of the spouse.
2. Code of Ethics refers to the Code of Governmental Ethics of the State of Louisiana, Title 42, Revised Statutes.

D. Prohibitions

1. No member of the immediate family of the Commissioner or the Deputy Commissioner may be employed in the agency.
2. No member of the immediate family of any administrator may be employed within that individual's administrative area, whether or not intervening levels of supervision are present between the administrator and the immediate family member.

E. Qualifications

1. In cases, in which an immediate family supervisor-employee relationship has developed in a manner not in violation of the Code of Ethics or of this policy, the supervisor will pass all responsibilities to his or her immediate supervisor for making decisions involving direct benefit to the employee member of his or her immediate family.

F. Disqualification Procedure

To clarify the requirements by the Code of Ethics concerning supervisors who have family members as subordinates. It is the intent of this procedure to assist an employee in performing his normal function of supervising through the effective management of personnel and to provide a means whereby the individual can find relief from a compromising situation, as well as provide a means where subordinates can seek redress when a problem is perceived by the staff.

The following disqualification procedure has been approved by the Commission on Ethics for Public Employees if the spouse, parent, sibling, aunt, or any other immediate family member of an employee is promoted to a supervisory role over the family member.

1. Those areas of supervision of a relative which may cause an ethical conflict are the following:
 - a. Certifying time and attendance records
 - b. Certifying travel expenses.
 - c. Completing performance rating evaluations (recommending merit increases).
 - d. Verifying personal use of state vehicles.
2. In these areas where ethical conflict may occur, the Supervisor will forward to the next level of supervision, as applicable, any records or documents which require certification. The supervisor will take all possible action to ensure that the integrity of his position is not compromised.

3. Those areas which may cause conflict within an office:
 - a. Approving leave.
 - b. Assigning responsibility for work or special tasks.
 - c. Making fair and equitable decisions when settling employee disagreements.
 - d. Assigning use of state vehicles or other state property and deciding which employees can claim mileage for use of personal vehicle.
4. In these areas the Supervisor, and his subordinates when applicable, will make every effort to remain impartial in his decisions and will discuss with the appropriate level of supervision before any decisions are rendered.
5. Final approval is required by the appropriate level of supervision for:
 - a. Recommendations for step increase.
 - b. Recommendations for promotion.
 - c. Recommendations for attendance at schools, seminars, etc.

IV. BUSINESS TRANSACTIONS

A. Purpose

To clarify circumstances under which OFI personnel may transact business with entities regulated by this Office.

B. Applicability

This section applies to all field examiners, review examiners, deputy chief examiners, chief examiners, investigators, securities analysts, attorneys, certified public accountant, deputy commissioner, and commissioner.

C. Exceptions

Human resource personnel, administrative managers, executive staff officer, support staff, and information systems personnel are exempt from the following limitations.

D. Definitions

1. Business relationship means loan or securities transaction. Loans would include credit card accounts.

E. Situational Guidelines

The following are offered as guidelines. Each OFI employee shall conduct all of his or her financial affairs, regardless of the type of institution involved, in a manner in which no legitimate criticism shall be made by any financial institution regulatory authority.

1. Prohibitions

- a. No examiner or auditor may apply for or accept a loan or advance of money or credit of any type from a state-chartered financial institution that they examine. This prohibition shall include credit cards of all types and any overdraft of a deposit account of any type.
- b. Bidding at a public auction where foreclosed property is being auctioned from an institution over which an OFI employee has any supervisory responsibility is prohibited.

2. Permissible Activities

- a. Nondepository examiners may borrow from entities, which they do not examine, i.e. banks, credit unions, thrifts.
- b. Depository examiners may, likewise, borrow from entities, which they do not examine, i.e. finance companies, pawnshops.
- c. Exception to the prohibition for borrowing from a state-chartered financial institution occurs when the loan relationship is established by a third party, e.g. OFI employee's child attends a private school where tuition funding is arranged by the school to provide for the payment of tuition and the financial institution is regulated by OFI, the employee may make the loan but may not participate in any issue involving that financial institution.
- d. An examiner who accepts employment with OFI and, prior to the employment, has an outstanding loan as described in E.1.a. above, may continue until it is paid under the contractual terms thereof, but it shall not be extended, renewed, renegotiated, or allowed to become past due.
- e. Examiners, securities analysts, and investigators domiciled in one district may transact business with entities located in another district; e.g. a consumer credit examiner can borrow from a finance company in a district which they do not examine. However, entities such as finance companies or banks that have numerous

locations could be problematic. For example, a nationwide finance company might have licensed locations statewide. If a loan were made at any of these locations, that examiner would be disqualified from participating in the examination of any of the locations regardless of their locations.

- f. Deposit accounts may be maintained at any state chartered financial institution; however, a check may not be given for which there are insufficient funds in the account to pay said check. An overdraft would cause a "loan" and thereby be prohibited should the financial institution be one with which an employee is prohibited from doing business.

3. Recusal

- a. An examiner must recuse him/herself from the examination or any decision making involving an entity with which a business relationship exists. The responsibility for the duty can only pass to a person at an equal or higher level, not to subordinates. This means that a District Office Manager should not establish any business relationship with any entity examined by that district office. It is not sufficient for the Manager to be recused from the examination; the entire field office must be recused. Another field office would have to conduct the examination, as the responsibility cannot be delegated to subordinates.
- b. Should a situation arise where entities merge, a sale occurs, etc., and a business relationship subsequently exists with an institution which would have otherwise been prohibited, the employee must inform the appropriate supervisor and be recused from future examinations and/or issues relating to that institution.
- c. Personnel in the field and main office, including securities analysts, who have statewide administrative responsibility must recuse themselves from any issue involving an entity with which they have a business relationship. This can be effectively accomplished for all current positions except for the commissioner for which there is no equal or higher level position and the attorney-general counsel, for which there is no attorney at an equal or higher level.
- d. While OFI has some supervisory responsibility for oversight of out-of-state, state chartered financial institutions, the examinations are performed by the home state (state where the main office is domiciled) and home state laws apply. It is extremely unlikely that OFI would become involved in any transaction with the branches

of these out-of-state entities; therefore, OFI personnel may establish business relationships with them.

However, should OFI assist a home state in the safety and soundness or compliance examination, any examiner having a business relationship with the bank must be recused from the examination.

4. Registration Fees, Travel, and Lodging

- a. The agency can allow trade associations and other groups to waive registration fees for OFI personnel who are invited to speak or participate in panel discussions at conferences, conventions, and seminars, so long as the association or other group is not itself regulated by OFI. It has been determined that it is a benefit to the agency to know what presentations are being made at such meetings and it is also a benefit to representatives of the entities in attendance. The employee may attend the entire conference in order to monitor other presentations and be available to answer questions from the sponsors and attendees.

NOTE: THE EMPLOYEE MUST BE A SPEAKER AT THE MEETING IN ORDER FOR THIS TO APPLY.

- b. The sponsoring association or group MAY NOT, however, pay travel or lodging expenses for the employee.

APPROVED BY:



John Ducrest, CPA
Commissioner